

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

IN RE:	)	
	)	
JEFFERSON COUNTY, ALABAMA,	)	
	)	CASE NO.: 11-5736-TBB-9
Debtor.	)	
	)	CHAPTER 9
	)	

---

**MOTION OF INDENTURE TRUSTEE FOR JEFFERSON COUNTY’S SEWER  
WARRANTS FOR EXPEDITED HEARING ON ITS MOTION (A) REQUESTING THE  
COURT ABSTAIN FROM TAKING ANY ACTION TO INTERFERE WITH THE  
RECEIVERSHIP CASE AND THE RECEIVER’S OPERATION AND  
ADMINISTRATION OF SEWER SYSTEM IN ACCORDANCE WITH THE  
RECEIVERSHIP ORDER, OR (B) SEEKING RELIEF FROM THE AUTOMATIC  
STAY TO THE EXTENT NECESSARY TO ALLOW RECEIVER TO CONTINUE TO  
OPERATE AND ADMINISTER THE SEWER SYSTEM UNDER  
THE RECEIVERSHIP ORDER**

---

**I. INTRODUCTION**

The Bank of New York Mellon, in its capacity as Indenture Trustee (the “Trustee”) for \$3.6 billion in special pledged sewer revenue warrants (the “Parity Securities”<sup>1</sup>) issued by Jefferson County, Alabama (the “County” or “Debtor”) and as a secured creditor and party-in-interest,<sup>2</sup> has filed contemporaneously herewith the Expedited Motion of Indenture Trustee for Jefferson County’s Sewer Warrants for (A) The Court to Abstain from Taking any Action to

---

<sup>1</sup> The warrants include the following: \$211,040,000 Sewer Revenue Refunding Warrants Series 1997-A; \$275,000,000 Sewer Revenue Capital Improvement Warrant Series 2001-A; \$110,000,000 Sewer Revenue Capital Improvement Warrants Series 2002-A; \$839,500,000 Sewer Revenue Refunding Warrants Series 2002-C; \$41,820,000 Sewer Revenue Refunding Warrants Series 2003-A; \$1,155,765,000 Sewer Revenue Refunding Warrants Series 2003-B; and \$1,052,025,000 Sewer Revenue Refunding Warrants 2003-C. The Indenture refers to the warrants as “Parity Securities” and the warrantholders as “Parity Security Holders.”

<sup>2</sup> The Trustee is a party-in-interest by virtue of the claims it holds against the County and, therefore, may request relief from the automatic stay to the extent it may apply.

Interfere with the Receivership Case and The Receiver's Operation and Administration of Sewer System in Accordance with the Receivership Order, or (B) For Relief from the Automatic Stay to the Extent Necessary to Allow Receiver to Continue to Operate and Administer the Sewer System under the Receivership Order (the "Motion"). The Trustee requests the Court hear the Motion on an expedited basis as soon as possible.

## **II. BACKGROUND**

The Circuit Court of Jefferson County, Alabama (the "State Court") in the case styled: *The Bank of New York Mellon, as Indenture Trustee vs. Jefferson County, Alabama, et al.*, Case No. CV-2009-02318 (the "Receivership Case") appointed a Receiver over the County's sewer system (the "System") on September 22, 2010 (the "Receivership Order"). The Receivership Order took possession and control of the County's sewer system and the revenues attributable to or traceable from moneys derived from the operation of the sewer system (the "System") away from the County and gave it to the Receiver. The Receiver has been operating and administering the System to the exclusion of the County and has had the sole and exclusive right and authority to control all accounts related to the System and its revenues since the entry of the Receivership Order. Notwithstanding the clear legal authority that the automatic stay does not apply to the Receiver or the Receivership Case and that the County has no authority to require the Receiver turnover the System to the County, the County has by letter dated November 9, 2011, demanded that the Receiver turnover the System to the County and has asserted that the automatic stay does apply and that unless the Receiver relinquishes control of the System back to the County the County will seek remedies against the Receiver. The Trustee's Motion seeks an immediate determination that the Receiver is entitled to maintain possession and control over the System despite the County's Chapter 9 proceeding.

### III. GROUNDS FOR EXPEDITED RELIEF

1. The Trustee seeks an order from this Court abstaining from taking any action to interfere with the Receivership Case and the performance by the Receiver of his powers and duties under the Receivership Order. In the alternative, the Trustee moves for an expedited order modifying the automatic stay to the extent necessary to allow the Receiver to continue exercising all of the powers and duties granted him under the Receivership Order.

2. The foregoing relief is necessary so the Receiver may continue to operate and administer the System in accordance with the terms of the Indenture and the Receivership Order without any cloud on his authority to do so, and in order to mitigate additional irreparable harm to the Parity Security Holders and to protect the Parity Security Holders' interests in the System.

3. Expedited consideration of the Trustee's Motion is necessary because confusion over who is in control of the System's management will harm the System. The Receiver has the sole and exclusive control over the System, including the accounts of the System, the right and authority to enter into or modify System contracts, the right and authority to hire, discharge, manage and control System Staff, and the right and authority to fix and charge rates and charges for services furnished by the System. (*See* Motion, Ex. B, Receivership Order at 9 - 11, ¶¶ 2(c), (2)(d), 2(e), 2(f), 2(j)). Any uncertainty, for any length of time, over whether the Receiver or the County is in charge of these functions, among others, will result in lost efficiencies and revenues.

4. Further, expedited consideration of the Trustee's motion for relief from stay "is contemplated by 11 U.S.C. § 362(f), which authorizes the Court to grant stay relief with or without a hearing 'if necessary to prevent irreparable damage to the interest of an entity in property . . . .'" *In re Parten*, No. 07-10255-JDW, 2007 WL 788883, at \*2 (Bkrtcy. M.D. Ga. March 13, 2007); *see also General Electric Credit Corporation v. Montgomery Mall Limited*

*Partnership (In re Montgomery Mall Limited Partnership)*, 704 F.2d 1173, 1175-76 (10<sup>th</sup> Cir. 1983) (Tenth Circuit Court of Appeals affirming a bankruptcy court's decision to conduct a hearing on a motion for emergency relief on one day's notice and noting that relief under § 362(f) was appropriate where irreparable injury to collateral would ensue).

5. Allowing the County to manage the System for any period of time will cause irreparable harm to the Trustee and the Parity Security Holders. The Parity Securities are limited-recourse debt secured by a special pledge of the Trust Estate (as defined below).<sup>3</sup> Thus, as found by the State Court, the County's failure to operate the System in a manner that generated revenues sufficient to provide for the payment of the Parity Securities and other obligations outstanding against the System, and for the payment of expenses of operating and maintaining the System reduced the overall value of the Trust Estate and resulted in irreparable harm to the Trustee and the Parity Security Holders. (*See* Motion, Ex. B, Receivership Order at 6, ¶ 17, 19). In the Trustee's estimation, the Parity Security Holders lost at least two million dollars of revenue per month that could have been applied toward the payment of the County's then-outstanding Warrant obligations.

6. The County has demonstrated an inability to efficiently and economically administer the System. Returning control of the System to the County would be a set-back to the efficient operation of the System. Both the Federal District Court and the State Court determined

---

<sup>3</sup> "The Trustee has a first priority lien on all funds of the System in its possession, the System Revenues (other than revenues derived from the Sewer Tax and any other tax revenues that constitute System Revenues) that remain after the payment of Operating Expenses, all monies from whatever source derived that are required by the Indenture to be deposited from time to time in the Debt Service Fund and the Reserve Fund, together with any investments and reinvestments of such monies and the income [or] proceeds thereof, and any and all other monies, rights and properties of every kind or description which have been or hereafter may be sold, transferred, conveyed, assigned, hypothecated, endorsed, deposited, pledged, mortgaged, granted or delivered to, or deposited with Trustee by the County or anyone on its part as additional security for payment of all or any specified series of Parity Securities, or which pursuant to any of the provisions of the Indenture may come into possession or control of the Trustee as such additional security, in each case as security for the Parity Securities and the performance by the County of the covenants set forth in the Indenture (collectively the "Trust Estate")." (*See* Motion, Ex. B, Receivership Order 4-5, ¶ 13).

that the County failed to operate the System in an economical, efficient and proper manner and that the System would benefit from the management of the Receiver.

a. In June 2009, Judge Proctor, considered the appropriate factors for the appointment of a Receiver and found that the factors weighed in favor of the appointment of a Trustee. Specifically, Judge Proctor found that the County and its representatives had engaged in fraudulent conduct and suppression surrounding the System and the issuance of the Warrants; that the County was squandering the assets of the System; that the County was not administering the System in a fiscally responsible manner; and that a Receiver would enhance the operational efficiencies of the System. (*See* Motion, Ex. D, Memorandum Opinion at 16, 22, 23).

b. Judge Johnson made similar findings more than a year later. The State Court held that the Trustee had proven all factors necessary under Alabama law to be entitled to the appointment of a receiver; that the County had failed to operate the System in an economical, efficient and proper manner; and that the public interest and the ends of justice would be best served by the appointment of a Receiver. (*See* Motion, Ex. B, Receivership Order 6, ¶¶ 16-17).

7. Despite the election of new Commissioners, nothing has changed at the County since the Receivership Order was entered. The County is still dilatory in its actions and uncooperative. For example, as recent as July 2011, the County forced the Receiver to seek the Court's assistance in obtaining control over certain bank accounts related to the System. In issuing its order the State Court emphasized that there should be no further debate about the Receiver's sole and exclusive right and authority to control all accounts related to the System, that the order was issued solely to clear up "any misplaced belief to the contrary any party may

have,” and it put the County on notice that if the County did not comply with the order it would immediately begin contempt proceedings. (*See* Motion, Ex. G, July 8, 2011 Order at ¶¶ 1, 4-5). And as evidenced by the County’s resolution accompanying its Chapter 9 Petition, the County still has no intention of raising System rates to a level necessary to comply with its obligations.

8. A speedy decision that the Receiver continues to control the System post-petition and that the filing of the Chapter 9 petition by the County did not alter or otherwise divest the Receiver of any authority granted by the Receivership Order will prevent further irreparable harm to the Parity Security Holders. Any public struggle for control of the System, perceived or actual, will likely cause disorder. Therefore, the Trustee’s motion should be heard on an expedited basis as soon as possible.

WHEREFORE, premises considered, the Trustee respectfully requests that the Court enter an order:

1. Granting the request for expedited relief and setting this Motion for a final hearing on an expedited basis within three business days or as soon as possible; and
2. Granting any such other relief as the Court deems just and proper.

Respectfully submitted on this the \_10th\_ day of November, 2011.

By: /s/ Larry B. Childs  
Larry B. Childs  
Brian J. Malcom  
WALLER LANSDEN DORTCH &  
DAVIS LLP  
1901 Sixth Avenue North, Suite 1400  
Birmingham, AL 35203  
Phone: (205) 214-6380  
Fax: (205) 214-8787

- and -

David E. Lemke  
Ryan K. Cochran  
WALLER LANSDEN DORTCH &  
DAVIS LLP  
511 Union Street, Suite 2700  
Nashville, TN 37219  
Phone: (615) 244-6380  
Fax: (615) 244-6804

*Attorneys for The Bank of New York  
Mellon, as Indenture Trustee*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document has been served on the following by First Class U.S. Mail, postage prepaid, addressed as follows:

Jefferson County, Alabama  
Patrick Darby  
Jay Bender  
Dylan C. Black, Esq.  
Kevin C. Newsom, Esq.  
J. Thomas Richie, Esq.  
Bradley Arant Boult Cummings LLP  
1819 Fifth Avenue North  
Birmingham, AL 35203

Jefferson County Special Counsel  
J.F. "Foster" Clark, Esq.  
Balch & Bingham, LLC  
1901 6th Avenue North  
2600 AmSouth Harbert Plaza  
Birmingham, AL 35203-4644

Jefferson County Special Counsel  
J. Hobson Presley, Jr.  
Presley Burton & Collier, LLC  
2801 Highway 280 South, Suite 700  
Birmingham, AL 35223-2483

Jefferson County Attorney  
Jeffrey M. Sewell, County Attorney  
Room 280, Jefferson County Courthouse  
716 North Richard Arrington Jr. Blvd.  
Birmingham, AL 35203

Bankruptcy Administrator for the Northern  
District of Alabama (Birmingham)  
Office of the Bankruptcy Administrator  
c/o J. Thomas Corbett, Esq.  
United States Bankruptcy Court  
Robert S. Vance Federal Building  
1800 5th Ave. North  
Birmingham AL 35203

U.S. Bank, National Association, as Paying  
Agent  
2204 Lakeshore Drive Suite 302  
Mail Code: EX-AL-WWPH  
Homewood, AL 35209

JPMorgan Chase Bank, as Liquidity Agent  
c/o John A. Henry, Jr.  
Kutak Rock LLP  
1801 California Street, Suite 3100  
Denver, CO 80202

Bank of America, N.A.  
c/o David L. Eades  
Moore & Van Allen, PLLC  
100 North Tryon Street, Suite 4700  
Charlotte, NC 28202-4003

The Bank of New York Mellon  
c/o Thomas C. Mitchell  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2669

State Street Bank and Trust Company  
c/o William W. Kannel  
Mintz, Levin, Cohn, Ferris, Glovsky and  
Popeo, P.C.  
One Financial Center  
Boston, MA 02111

The Bank of Nova Scotia  
c/o James E. Spiotto  
Chapman & Cutler LLP  
111 West Monroe Street  
Chicago, IL 60603-4080

Lloyds TSB Bank PLC  
c/o James E. Spiotto  
Chapman & Cutler LLP  
111 West Monroe Street  
Chicago, IL 60603-4080

JPMorgan Chase Bank  
Steve M. Fuhrman, Esq.  
Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, NY 10017

Societe Generale  
c/o Mark J. Fiekers  
c/o Joyce T. Gorman  
Ashurst LLP  
1725 I Street NW, Suite 300  
Washington, DC 20006

Regions Bank  
c/o Jayna Partain Lamar  
Maynard Cooper & Gale, P.C.  
AmSouth/Harbert Plaza, Suite 2400  
1901 6th Avenue North  
Birmingham, AL 35203-2618

Financial Security Assurance  
c/o Mark N. Berman  
Nixon Peabody LLP  
100 Summer Street  
Boston, MA 02110-2131

Financial Guaranty Insurance Company  
c/o H. Slayton "Slate" Dabney, Jr.  
King & Spaulding  
1185 Avenue of the Americas  
New York, NY 10036-4003

Syncora Guarantee, Inc.  
c/o Quinn Emanuel Urquhart & Sullivan,  
LLP  
Jonathan E. Pickhardt  
Jake M. Shields  
Jeffrey C. Berman  
51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, NY 10010

Receiver for County's Sewer System  
John S. Young, Jr. LLC, as Receiver  
c/o Baker, Donelson, Bearman, Caldwell &  
Berkowitz, P.C.  
Timothy M. Lupinacci, Esq.  
W. Patton Hahn, Esq.  
Joe Conner, Esq.  
Kevin R. Garrison, Esq.  
1600 Wachovia Tower  
Birmingham, AL 35203



National Public Finance Guarantee  
c/o Adam Bergonzi  
Chief Risk Officer  
Daniel McManus, General Counsel  
113 King Street  
Armonk, NY 10504

Jefferson County, Alabama  
c/o Kenneth Klee  
c/o Lee Bogdanoff  
Klee, Tuchin, Bogdanoff & Stern, LLP  
1999 Avenue of the Stars, Thirty-Ninth  
Floor  
Los Angeles, CA 90067-5061

Cooper Shattuck, Esq.  
Legal Advisor  
Office of the Governor  
State of Alabama  
Office of the Governor  
State Capitol, Room N-104  
600 Dexter Avenue  
Montgomery, AL 36130

David Perry, Esq.  
Finance Director  
Office of the Governor  
State of Alabama  
Office of the Governor  
State Capitol, Room N-104  
600 Dexter Avenue  
Montgomery, AL 36130

Luther Strange, Esq.  
Attorney General State of Alabama  
501 Washington Avenue  
Montgomery, AL 36130

Olivia Watts Martin, Esq.  
Office of the Alabama Attorney General  
PO Box 300152  
Montgomery, AL 36130

Alabama Department of Environmental  
Management  
c/o Tom Johnston, Esq.  
General Counsel  
P. O. Box 301463  
Montgomery AL 36130-1463

Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Environmental Protection Agency Atlanta  
Federal Center  
61 Forsyth Street, SW  
Atlanta, GA 30303-3104

The Securities and Exchange Commission  
SEC Headquarters  
100 F Street, NE  
Washington, DC 20549

Internal Revenue Service  
Centralized Insolvency Operation  
Post Office Box 21126  
Philadelphia, PA 19114-0326

JPMorgan Chase Bank  
Attn: Michael Mak  
60 Wall Street  
New York, NY 10260

Bayerische Landesbank  
560 Lexington Avenue  
18<sup>th</sup> Floor  
New York, NY 10022  
Attn: Francis X. Doyle  
Second Vice President

The Depository Trust Company, on behalf  
of the holders of the Jefferson County,  
Alabama, General Obligation Capital  
Improvement Warrants, Series 2003-A  
and 2004-A  
55 Water Street  
New York, NY 10041

JPMorgan Chase Bank  
60 Wall Street  
New York, NY 10260  
Attn: William A. Austin

Shoe Station, Inc.  
Attn: Michael T. Cronin, Esq.  
Johnson Pope Bokor Ruppel & Burns, LLP  
911 Chestnut Street  
Clearwater, FL 33576

U.S. Bank, National Association (as  
successor to SouthTrust Bank), as  
paying agent  
Attn: Felicia Cannon  
2204 Lakeshore Drive Suite 302  
Mail Code: EX-AL-WWPH  
Homewood AL 35209

The Bank of New York Mellon Trust  
Company, N.A. (f/k/a The Bank of New  
York Trust Company of Florida, N.A.),  
as registrar, transfer agent and paying  
agent  
Attn: Charles S. Northen, IV  
505 N. 20th Street  
Suite 950  
Birmingham, AL 35203

National Public Finance Guarantee Corp.  
(f/k/a MBIA Insurance Corp.), as insurer  
of the General Obligation Capital  
Improvement and Refunding Warrants,  
2003-A and Series 2004-A Attn: Daniel  
McManus, General Counsel  
113 King Street  
Armonk, NY 10504

Morris & Dickson Co LLC  
P.O. Box 51367  
Shreveport, LA 71135-1367

City of Hoover  
P.O. Box 360628  
Hoover, AL 35236-0628

University of Alabama Health Services  
Foundation, P.C.  
P.O. Box 55309  
Birmingham, AL 35255-5309

Beckman Coulter  
Dept. CH10164  
Palatine, IL 60055-0164

AMT Medical Staffing, Inc.  
P.O. Box 12105  
Birmingham, AL 35202

Teklinks Inc.  
201 Summit Parkway  
Homewood, AL 35209

UAB Health System  
619 19<sup>th</sup> Street South  
Jefferson Tower, Room J306  
Birmingham, AL 35249-6805

AMSOL  
P.O. Box 6633  
High Point, NC 27262

AMCAD  
15867 North Mountain Road  
Broadway, VA 22815  
Augmentation, Inc.  
3415 Independence Drive, Suite 101  
Birmingham, AL 35209-8315

John Plott Company Inc.  
2804 Rice Mine Road NE  
Tuscaloosa, AL 35406

Brice Building Co., LLC  
201 Sunbelt Parkway  
Birmingham, AL 35211

Universal Hospital Services  
P.O. Box 86  
Minneapolis, MN 55486-0940

Laboratory Corporation of America  
P.O. Box 12140  
Burlington, NC 27216-2140

Medical Data Systems Inc.  
2001 9th Avenue  
Suite 312  
Vero Beach, FL 32963

This the 10<sup>th</sup> day of November, 2011.

/s/ Ryan K. Cochran  
Of Counsel